

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

PROCEDURAL RULES

The Chief Administrative Law Judge of the Office of Administrative Hearings (OAH), pursuant to the authority set forth in Section 8 of the Office of Administrative Hearings Establishment Act of 2001 (the “Act”) (D.C. Law 14-76; D.C. Official Code § 2-1831.05(a)(7)), gives notice of the adoption of the following new Chapter 28 of Title 1 of the District of Columbia Municipal Regulations (DCMR). These rules prescribe the rules of trial practice and procedure in matters before OAH.

These rules were published as final rules on March 5, 2004, at 51 DCR 2415, September 3, 2004, at 51 DCR 8595, September 3, 2004, at 51 DCR 8606, and as emergency and proposed rules on September 23, 2004, at 51 DCR 9322.

CHAPTER 28

OFFICE OF ADMINISTRATIVE HEARINGS RULES OF PRACTICE AND PROCEDURE

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2800 SCOPE OF CHAPTER

- 2800.1 These Rules (Chapters 28 and 29 of Title 1) shall govern the procedure in all cases brought before this administrative court.
- 2800.2 These Rules shall not be construed to extend or limit the jurisdiction of this administrative court.
- 2800.3 These Rules shall be construed and administered to secure the just, speedy and inexpensive determination of every case.
- 2800.4 No Administrative Law Judge shall maintain standing, chamber or other individual rules. Nothing in this Section, however, shall be construed to limit the authority of the Chief Administrative Law Judge to approve the use of forms, documents and practices not inconsistent with these Rules that shall assist in managing cases coming before this administrative court, nor the authority of an Administrative Law Judge to issue any lawful order for purposes of case management or other matters in a particular case.
- 2800.5 Many authorities may be applicable to administrative matters heard by this administrative court. Among these are the Constitution of the United States, statutes and regulations of the United States, and statutes and regulations of the District of Columbia. It is not practical to delineate in these Rules each of the many authorities that may possibly apply in some matters but not others. That these authorities are not specified in these Rules, however, does not change the fact of their applicability where the law so requires.
- 2800.6 These Rules may be cited individually in the form as “OAH Rule ____”. When citing in this format, reference to the District of Columbia Municipal Regulations (DCMR) may be omitted.

2801 APPLICABILITY OF DISTRICT OF COLUMBIA SUPERIOR COURT RULES OF CIVIL PROCEDURE

- 2801.1 Where indicated, these Rules may incorporate by reference specified District of Columbia Superior Court Rules of Civil Procedure. When used in a Superior Court rule incorporated by reference, the following terms shall have the following meanings:
- (a) “Court” shall mean the District of Columbia Office of Administrative Hearings;
 - (b) “Judgment” shall mean “Order.”
- 2801.2 Where a procedural issue coming before this administrative court is not specifically addressed in these Rules, this administrative court may rely

upon the District of Columbia Superior Court Rules of Civil Procedure as persuasive authority.

2802 COMMENCEMENT OF ACTION IN OAH

2802.1 Unless otherwise provided by statute or these Rules, cases, other than those commenced by a Notice of Appeal as set forth in Chapter 29 of Title 1, are commenced by either the filing of a Notice of Infraction, Notice of Violation or a request for a hearing as authorized by applicable law.

2802.2 Any case commenced before this administrative court that arose exclusively from material facts underlying a contested case pending before an agency or tribunal prior to October 1, 2004, shall be commenced before this administrative court not later than 120 days after this administrative court acquires jurisdiction to hear such case.

2803 COMMENCEMENT BY NOTICE OF INFRACTION

2803.1 When the Government commences a case by filing a Notice of Infraction, the Government shall also file and serve upon all other parties, in the manner consistent with applicable law and with the requirements of due process, a copy of all exhibits it intends to offer in prosecuting the case, unless, with leave of this administrative court and for good cause shown, such exhibits could not have been so filed and served.

2803.2 In lieu of submitting exhibits as specified in this Rule, the Government may submit a statement that no exhibits shall be offered in prosecuting the case.

2803.3 A Notice of Infraction that fails to comply with the requirements of applicable law and these Rules may be rejected for filing and/or dismissed.

2804 COMMENCEMENT BY NOTICE OF VIOLATION

2804.1 When the Government commences a case by filing a Notice of Violation, the Government shall also file and serve upon all other parties, in the manner consistent with applicable law and with the requirements of due process, a copy of all exhibits it intends to offer in prosecuting the case, unless, with leave of this administrative court and for good cause shown, such exhibits could not have been so filed and served.

2804.2 In lieu of submitting exhibits as specified in this Rule, the Government may submit a statement that no exhibits shall be offered in prosecuting the case.

2804.3 A Notice of Violation that fails to comply with the requirements of applicable law and these Rules may be rejected for filing and/or dismissed.

2804.4 In any case in which the Government represents that a Notice of Violation was served by certified mail, it shall file, and serve upon the Respondent, a copy of the certified mail return receipt (U.S.P.S. Form 3811, or its successor) signed by the recipient, or an affidavit or declaration sufficient to demonstrate that the Notice of Violation was received by the Respondent, or if not received, the reason, to the best of the Government's knowledge, why it was not received. Any submission made under this Section shall also include a photocopy of any envelope returned to the Government by the United States Postal Service as undelivered or undeliverable, and any paper or document appended to such envelope by the United States Postal Service.

2804.5 Unless the Respondent has answered the Notice of Violation or otherwise appeared, any case in which the Government has failed to comply with Section 2804.4 within twenty (20) calendar days of the filing of the Notice of Violation shall be dismissed without prejudice for lack of sufficient proof of proper service. If a case is pending at the time Section 2804.4 is adopted, such compliance shall occur within twenty (20) calendar days of the filing of the Notice of Violation, or seven (7) calendar days of the adoption of Section 2804.4, whichever is later.

2805 COMMENCEMENT BY REQUEST FOR HEARING

2805.1 Unless otherwise required by statute or these Rules, to commence a case by a request for a hearing, a written request filed in this administrative court is required.

2805.2 While a request for a hearing need not follow a specific format, it shall contain a short, plain and reasonably comprehensible statement that the party requests a hearing, and a summary description of the nature of the dispute, and the relief sought, including, where applicable, the benefit amount or sum certain being sought.

2805.3 Where authorized by law, oral requests to another government agency for a hearing must be reduced to writing and filed with this administrative court by the government agency receiving such a lawfully authorized oral request within three (3) business days of the request. A failure to comply with this Rule shall place the government agency in default, whereupon the agency shall be required to show good cause within five (5) business days after service of the default notice why a final order shall not be entered in favor of the party making the oral hearing request.

2805.4 The Clerk's office shall make reasonably available a form approved by the Chief Administrative Law Judge for use in requesting a hearing.

2805.5 Notwithstanding the provisions of Section 2811.5 of these Rules, when a case is commenced by filing a request for a hearing with this administrative court, the time limit for filing such a request permitted under applicable law, other than these Rules, shall control. In the case of a

time limit established by a District of Columbia agency rule, other than these Rules, the agency rule shall apply if in effect prior to October 1, 2004.

2805.6 Where authorized by Section 6(h) of the Act, a governing board, commission or other deliberative body may, upon the timely receipt of a request for hearing, authorize this administrative court to hold a hearing and issue a final decision in a matter, provided that such authorization is made in writing and, along with a copy of the request for hearing, is filed with this administrative court no later than forty (40) days from the first date such entity or its designee initiates the proposed disciplinary or other action. A failure to timely file such authorization shall be deemed an election by the governing board, commission or body to exercise its right to retain jurisdiction pursuant to Section 6(h) of the Act.

2805.7 Any request for a hearing under this Rule appealing a proposed tax assessment shall be filed with this administrative court, and a service copy of the request for hearing served upon the agency issuing the proposed tax assessment, in order for the case to be commenced before this administrative court. The request for hearing filed with this administrative court shall be accompanied by a copy of the proposed tax assessment.

2805.8 Any request for a hearing under this Rule appealing a determination regarding unemployment compensation shall be filed with this administrative court in order for the case to be commenced before this administrative court. Any agency accepting claims for unemployment compensation and each party to the matter shall file a copy of the claims examiner's decision with this administrative court no later than three (3) business days from the transmittal date of the hearing request to the agency and parties by this administrative court.

2806 CASE TRACKING

2806.1 At the time any matter before this administrative court is commenced, the Clerk shall assign the case to a Standard or Complex case track for management and disposition. These tracks are defined as follows:

(a) Standard Cases include all matters arising from the Civil Infractions Act of 1985, as amended (D.C. Official Code Title 2, Chapter 18) and lawfully committed to the jurisdiction of this administrative court. Standard Cases shall also include, but not be limited to, the following cases:

- (1) D.C. Department of Employment Services matters;
- (2) D.C. Department of Human Services matters;
- (3) D.C. Taxicab Commission matters;

- (4) Board of Appeal and Review Cases, excluding Certificate of Need and Notice of Program Reimbursement determinations; and
 - (5) Matters arising under D.C. Official Code Title 8, Chapter 8.
 - (b) Complex Cases include those matters not designated as Standard Cases under this Section.
- 2806.2 A party in a Standard Case track may, within thirty (30) days of the commencement of a case and prior to trial, file a motion in accordance with Rule 2812 to change to a Complex Case track. The presiding Administrative Law Judge also may change a Standard Case to a Complex Case upon his or her own motion. In deciding whether to designate a case as a Complex Case under this Section, the presiding Administrative Law Judge shall consider the number of parties, the relief requested, the number and difficulty of the legal and factual issues, the anticipated number of witnesses and exhibits, the anticipated length of the trial, and any other factor that, in his or her discretion, indicates that the fair, just and prompt disposition of the case will or will not be enhanced by use of the procedures available in Complex Cases.
- 2806.3 This Rule does not apply to an Appellate Proceeding.
- 2807 IDENTIFICATION OF PLEADINGS AND OTHER PAPERS FILED; UNREPRESENTED AND REPRESENTED PARTIES**
- 2807.1 Unless otherwise provided by these Rules, the first pleading or paper filed by or on behalf of a party shall set forth the party's name, full business or residence address, telephone number(s), and fax number(s), if any. All subsequent pleadings or other papers filed by or on behalf of a party shall set forth the same information, unless the party is represented by counsel or other authorized representative. Except when denying a charge in a Notice of Infraction or Notice of Violation and challenging personal jurisdiction, or unless otherwise specified, the filing of a pleading or paper in conformity with this Section constitutes the entry of an appearance by the party.
- 2807.2 If a party is represented by counsel, all pleadings and other papers shall set forth the name, full business or street address, telephone number(s), fax number(s), if any, and bar number of the attorney. Except when denying a charge in a Notice of Infraction or Notice of Violation and challenging personal jurisdiction, or unless otherwise specified, the filing of a pleading or paper in conformity with this Section constitutes the entry of an appearance by counsel.
- 2807.3 If a party is represented by an authorized representative, all pleadings and other papers shall set forth the name, full business or street address,

telephone number(s), fax number(s), if any, of the authorized representative. Except when denying a charge in a Notice of Infraction or Notice of Violation and challenging personal jurisdiction, or unless otherwise specified, the filing of a pleading or paper in conformity with this Section constitutes the entry of an appearance by the authorized representative.

2807.4 It is solely the obligation of a party, an authorized representative, or an attorney whose address, telephone number(s), or fax number(s), if any, have changed, to promptly notify the Clerk and all other parties. Any change of address shall be filed with this administrative court and served upon all parties within three (3) business days of its occurrence. The information provided to this administrative court pursuant to this Rule shall be conclusively deemed to be correct and current.

2807.5 A pleading or other paper not conforming to the requirements of this Rule may be rejected for filing by the Clerk of this administrative court or ordered stricken by the presiding Administrative Law Judge.

2808 SERVICE: PAPERS TO BE SERVED

2808.1 Except as otherwise provided in these Rules or by statute, every order required by its terms to be served, every pleading, except an answer to a Notice of Infraction or Notice of Violation, and every other paper filed in this administrative court shall be served upon the parties, or, if represented, their attorneys or authorized representatives. Proof of service must be filed in accordance with Rule 2810.

2809 SERVICE: HOW MADE

2809.1 Unless otherwise ordered by this administrative court or consented to by the parties and their counsel or their authorized representatives, service of the orders of this administrative court shall be made on the parties.

2809.2 A Notice of Infraction or a Notice of Violation shall be served in the manner and as provided by statute.

2809.3 Unless otherwise ordered by this administrative court or agreed upon by the parties, their counsel or their authorized representatives, service shall be made by delivering a copy to the last known address of the party, attorney or authorized representative, by mailing a copy to the last known address of the party, attorney or authorized representative, or by third-party commercial carrier if delivered within three (3) days.

2809.4 Delivery of a copy within this Rule means:

- (1) handing it to the attorney, party or authorized representative; or leaving it at the party's, attorney's or authorized representative's office or place of business with an individual of suitable age and discretion then employed therein;
- (2) leaving it at the party's dwelling house or usual place of abode with some individual of suitable age and discretion then located therein.

2809.5 Service by mail is complete upon depositing the copy with the United States Postal Service (including a mailbox regularly serviced by the United States Postal Service), with no less than first-class postage prepaid, and addressed to the attorney, party or authorized representative at the proper address.

2809.6 Service by a third party commercial carrier is complete upon deposit of the copy, addressed to the attorney, party or authorized representative at the proper address, into the custody of the carrier for delivery within no more than three (3) days of the carrier's receipt, with the cost of delivery prepaid.

2809.7 If consented to in writing by a party, its counsel, or its authorized representative, and after that consent has been filed with the Clerk, service of a paper may be made upon the consenting party by electronic or other means. The consenting party may withdraw its consent to such service. Such withdrawal must be in writing and shall only be effective after it is served on all parties and filed with the Clerk.

2809.8 Except as provided in Section 2809.1, this Rule does not apply to the transmittal of papers by this administrative court.

2810 FILING OF PAPERS; CERTIFICATE OF SERVICE REQUIRED

2810.1 The filing of papers with the administrative court as required by these Rules shall be made by delivering them to the Clerk in accordance with Rules 2809 and 2840.

2810.2 Unless otherwise provided by statute or these Rules, documents may be faxed to this administrative court in a manner prescribed by the Clerk, and any such document shall be considered filed as of the date the fax is received, provided that a hard copy is filed with the Clerk within three (3) business days of the transmission.

2810.3 Except as provided in these Rules, or unless otherwise ordered by the administrative court, no paper may be filed with this administrative court by email or other means.

2810.4 Except for an answer and plea to a Notice of Infraction or Notice of Violation, or as otherwise provided by statute or these Rules, all papers filed with this administrative court must contain a certificate of service identifying the individual serving the document as well as the parties served, the manner of service and date of service. A failure to provide a certificate of service may result in a paper being rejected for filing by the Clerk or ordered stricken by the presiding Administrative Law Judge.

2811 TIME COMPUTATION

2811.1 Except as specified in Section 2805.5 of these Rules, this Rule applies to all periods of time prescribed or allowed by these Rules, by order of this administrative court, or by any applicable law.

2811.2 In computing any period of time measured in days or calendar days, the day of the act, event or default from which the designated period of time begins to run shall not be included. If a period is measured in hours, then this Section does not apply.

2811.3 For any period that is measured in days or calendar days, the last day of the period shall be included, unless it is a Saturday, Sunday or a legal holiday, or when the act to be done is the filing of any paper with this administrative court, an inaccessible day, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation, unless the period is measured in calendar days.

2811.4 In computing any period of time measured in hours, no hours shall be excluded from the computation, except as provided in this Section, and this Section shall not apply to any period measured in days or calendar days:

- (a) If any period expires before 10:00 AM on any day, it shall be extended to 10:00 AM that day.
- (b) If any period expires after 4:00 PM on any day, it shall be extended to 10:00 AM on the next business day.
- (c) If any period expires on a Saturday, Sunday, legal holiday or inaccessible day, it shall be extended to 10:00 AM on the next business day.

2811.5 Whenever a party has the right or the obligation to do some act within a prescribed period after service of an order or other paper upon the party, and the order or other paper is served by United States mail or third party commercial carrier, five (5) days shall be added to the prescribed period, unless a statute provides otherwise.

2811.6 Whenever these Rules or an order of this administrative court require or allow an act to be done at or within a specified time, this administrative court, for good cause shown, may order the period enlarged or reduced if a request is made before expiration of the period, or, if the period has expired, may enlarge it if the failure to act was the result of excusable neglect; however this Section does not authorize the reduction or enlargement of any period prescribed by law, or any period provided under Rules 2805, 2829, 2832, 2833 or 2835 of this Chapter.

2812 MOTIONS

2812.1 An application to this administrative court for any interlocutory order shall be by motion. Unless made on the record in open court, all motions shall be in writing; shall list the case caption, docket number and presiding Administrative Law Judge prominently on the first page; and shall state with particularity the grounds for the motion, any supporting points and authorities, and the relief sought.

2812.2 When a motion is based on facts not appearing in the record, the parties may file affidavits or declarations pursuant to Section 2821.7.

2812.3 Except as otherwise ordered by this administrative court, a separate memorandum of points and authorities and proposed order need not be filed with a motion.

2812.4 Except as otherwise ordered by this administrative court, no dispositive motion may be filed fewer than fourteen (14) days prior to a trial before this administrative court absent a showing of good cause.

2812.5 Prior to filing any non-dispositive motion, the moving party shall first seek to obtain the consent of all other parties to the requested relief, and shall state on the first page of the motion the date, the approximate time and means used to communicate with each party, as well as whether all other parties consent to, oppose, or do not oppose the requested relief. Failure to comply with the requirements of this Section may result in the summary denial of the motion, or the motion being rejected for filing by the Clerk.

2812.6 When a request for consent is made by leaving an oral or written message because the party whose consent is being sought is unavailable at the time of the request, the party requesting consent shall wait at least twenty-four (24) hours, or until the next business day, whichever is later, before filing or serving the motion.

2812.7 Unless otherwise ordered by this administrative court, all opposing parties shall have eleven (11) days from service of the motion to file and serve a response. Replies shall be permitted only upon order of this administrative court.

2812.8 All motions shall be decided on the papers unless otherwise ordered.

2813 RESPONSIVE PLEADINGS

2813.1 Unless otherwise specified by applicable law, a party may answer a Notice of Infraction by pleading Admit, Admit with Explanation, or Deny as follows:

(a) A party who pleads Admit shall submit payment of the fine specified on the Notice of Infraction with the plea.

(b) A party who pleads Admit with Explanation shall file with the plea a written explanation and any other papers that the party wishes to have considered that explain the circumstances surrounding the infraction, and/or that the party believes justify a reduction or a suspension of the fine.

(1) The Government may file a response to a plea of Admit with Explanation within fourteen (14) days of the service of the plea by this administrative court.

(2) An Admit with Explanation case shall ordinarily be heard solely on the papers filed with this administrative court. In its discretion, this administrative court may require further submissions from the parties and/or may require a trial on any issue raised in the parties' papers, either on its own motion, or upon the motion of a party, where written submissions alone can not adequately explain the circumstances of the infraction.

(c) If a party pleads Deny, this administrative court shall hold a trial and shall issue a scheduling order setting the trial date and time and addressing other procedural issues. The trial date ordinarily shall be the pre-scheduled date stated on the Notice of Infraction, but this administrative court may change that date on motion for good cause, or on its own motion to promote sound judicial administration. In case of conflict between the trial date and time on the Notice of Infraction, and the trial date and time on the scheduling order, the scheduling order shall control.

- 2813.2 Unless otherwise ordered, a party that pleads Deny to a Notice of Infraction shall file and serve upon all parties, in a manner consistent with applicable law, these Rules and the requirements of due process, a copy of all exhibits the party intends to offer in defending the case. Such exhibits shall be filed and served within ten (10) days of trial, unless, for good cause shown, such exhibits can not be so filed and served. In lieu of submitting exhibits as specified in this Section, the party may submit a statement that no exhibits shall be offered in defending the case. Failure to comply with this Section may result in the preclusion of the party's exhibits at trial.
- 2813.3 Unless otherwise specified by applicable law, a party may answer a Notice of Violation by pleading Admit, Admit with Explanation, or Deny as follows:
- (a) A party who pleads Admit shall submit payment of the fine specified on the Notice of Violation with the plea and shall certify on the Notice of Violation form whether the violation has been abated.
 - (b) A party who pleads Admit with Explanation shall file with the plea a written explanation and any other papers that the party wishes to have considered that explain the circumstances surrounding the violation, and/or that the party believes justify a reduction or a suspension of the fine.
 - (1) The Government may file a response to a plea of Admit with Explanation within fourteen (14) days of the service of the plea by this administrative court.
 - (2) An Admit with Explanation case shall ordinarily be heard solely on the papers filed with this administrative court. In its discretion, this administrative court may require further submissions from the parties and/or may require a trial on any issue raised in the parties' papers, either on its own motion, or upon the motion of a party, where written submissions alone can not adequately explain the circumstances of the violation.
 - (c) If a party pleads Deny, this administrative court shall hold a trial and shall issue a scheduling order setting the trial date and time and addressing other procedural deadlines. The trial date ordinarily shall be the pre-scheduled date stated on the Notice of Violation but this administrative court may change that date on motion for good cause, or on its own motion to promote sound

judicial administration. In case of conflict between the trial date and time on the Notice of Violation, and the trial date and time on the scheduling order, the scheduling order shall control.

2813.4 Unless otherwise ordered, a party that pleads Deny to a Notice of Violation shall file and serve upon all parties, consistent with applicable law, these Rules and the requirements of due process, a copy of all exhibits the party intends to offer in defending the case. Such exhibits shall be filed and served within ten (10) days of trial, unless, for good cause shown, such exhibits can not be so filed and served. In lieu of submitting exhibits as specified in this Section, the party may submit a statement that no exhibits shall be offered in defending the case. Failure to comply with this Section may result in the preclusion of the party's exhibits at trial.

2813.5 Unless otherwise ordered, no responsive pleading is required in cases commenced by a request for a hearing.

2814 SIGNING OF PAPERS; LEGIBILITY OF PAPERS; REPRESENTATION TO OAH; SANCTIONS

2814.1 Unless otherwise provided by statute or these Rules, every paper filed with this administrative court shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party or party's authorized representative in accordance with the requirements of Rule 2807. A name affixed by an autopen or rubber stamp shall not be deemed a signature.

2814.2 An unsigned paper shall be rejected for filing by the Clerk or stricken by order of the presiding Administrative Law Judge unless omission of the signature is corrected prior to such action.

2814.3 Every paper filed with this administrative court shall be legible. An illegible paper shall be rejected for filing by the Clerk or ordered stricken by the presiding Administrative Law Judge unless a legible replacement is filed prior to such action. If permitted, a legible replacement shall supercede an illegible submission in its entirety.

2814.4 By presenting any paper to this administrative court (whether by signing, filing, or submitting), an attorney, unrepresented party or other authorized representative is certifying that to the best of that individual's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or to needlessly increase the cost of litigation;

- (b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a good faith and nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

2814.5 If, after notice and an opportunity to respond, this administrative court determines that the provisions of Section 2814.4 have been violated, this administrative court may, pursuant to Section 12 of the Act and all other applicable authorities, impose an appropriate sanction upon any attorney, law firm or representative that is determined to be in violation.

2815 ALTERNATIVE DISPUTE RESOLUTION

2815.1 Pursuant to Section 8 of the Act, the Chief Administrative Law Judge may establish practices and procedures for any Alternative Dispute Resolution (ADR) program for the Office of Administrative Hearings.

2815.2 Subject to any procedural requirements designated by the Chief Administrative Law Judge, a presiding Administrative Law Judge may refer any case for mediation or early neutral case evaluation unless otherwise prohibited by law.

2816 SUBSTITUTION OF PARTIES; INTERVENTION

2816.1 Upon oral or written motion, and with the consent of the party to be substituted or as otherwise authorized by law, this administrative court may permit such substitution of parties as justice requires.

2816.2 Anyone who has an interest in the subject matter of a case pending before this administrative court, and who contends that the representation of his or her interest may be inadequate, may file a motion to intervene in accordance with Rule 2812 stating the specific ground upon which intervention is sought, and attaching a pleading setting forth the claim or defense for which intervention is sought. Motions to intervene shall be decided in accordance with the provisions of D.C. Superior Court Civil Rule 24.

2816.3 In order to avoid undue delay or prejudice to the adjudication of the rights of the original parties, this administrative court may limit the terms and conditions of intervention.

2816.4 Notwithstanding any other provision of this Rule, no person may intervene as a co-petitioner with the Government in any action commenced by a Notice of Infraction or Notice of Violation or any Government enforcement action where the only remedy sought is a fine or monetary penalty.

2817 VOLUNTARY DISMISSAL OF ACTIONS

2817.1 A petitioner may file a summary motion for voluntary dismissal of any action, or of any claim asserted in an action, at any time, either before or after a respondent has answered a Notice of Infraction or Notice of Violation, or has otherwise appeared in an action, and the presiding Administrative Law Judge may grant a summary motion for voluntary dismissal without awaiting a response from the respondent.

2817.2 A respondent who objects to any aspect of an order granting a motion for voluntary dismissal may file a motion for reconsideration as provided in Rule 2832.

2817.3 The parties, or their authorized agents or representatives, also may file a stipulation of voluntary dismissal with prejudice, signed by all parties, their authorized agents or representatives, who have appeared in the action to dismiss an action.

2817.4 Unless otherwise provided by statute, these Rules or an order of this administrative court, a dismissal under this Rule is without prejudice unless otherwise stipulated by the parties; except that the dismissal of an action under this Rule that follows a prior dismissal without prejudice, shall be with prejudice unless otherwise ordered by the presiding Administrative Law Judge.

2817.5 Unless otherwise provided by statute, these Rules or order of this administrative court, the voluntary withdrawal of a request for a hearing shall be construed as a voluntary dismissal of an action.

2817.6 Nothing in this Rule shall preclude the presiding Administrative Law Judge from ordering that a dismissal shall be with prejudice in order to prevent unfair prejudice, inequity, or undue delay.

2818 INVOLUNTARY DISMISSAL OF ACTIONS

2818.1 For failure of the Petitioner to prosecute or to comply with these Rules or any order of this administrative court, a Respondent may move for dismissal of an action or of any claim against the Respondent, or the

presiding Administrative Law Judge may order such dismissal on his or her own motion. Subject to the limitations of Section 2818.2, and unless otherwise specified, a dismissal under this Section, other than a dismissal for lack of jurisdiction, constitutes an adjudication on the merits.

2818.2 Any order of involuntary dismissal entered pursuant to Section 2818.1 or on the presiding Administrative Law Judge's own motion shall not take effect until fourteen (14) days after the date on which it is served, and shall be vacated upon the granting of a motion filed by Petitioner within such fourteen (14) day period showing good cause why the case should not be dismissed.

2818.3 Unless otherwise required by statute, these Rules or an order of this administrative court, where counsel, an authorized representative, or an unrepresented party fails, without good cause, to appear at a hearing, or a pretrial, settlement or status conference, the presiding Administrative Law Judge may dismiss the case or enter an order of default in accordance with D.C. Superior Court Civil Rule 39-I. Any order of dismissal or default entered pursuant to this Section shall not take effect until fourteen (14) days after the date on which it is served, and shall be vacated upon the granting of a motion filed by the party within such fourteen (14) day period showing good cause why the case should not be dismissed or defaulted.

2819 CONSOLIDATION; SEPARATE TRIALS

2819.1 When actions involving a common question of law or fact are pending before this administrative court, or when multiple Notices of Infraction or Notices of Violation involving the same respondent are pending before this administrative court, this administrative court may, upon motion by any party or on its own motion, order a joint trial of any or all the matters in issue in the actions; may order all actions consolidated for any or all purposes; and may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

2819.2 Whenever a case is commenced by the filing of a second Notice of Infraction against a respondent pursuant to applicable law, it shall be consolidated with the case arising out of the first Notice of Infraction, without further order.

2819.3 This administrative court, in furtherance of convenience or to avoid unfair prejudice, or when separate trials would be conducive to expedition and economy, may order a separate trial of any claim or claims or of any separate issue or issues.

2820 EVIDENCE BEFORE OAH

2820.1 Evidence shall not be excluded on the ground that it is hearsay.

- 2820.2 Subject to the limitations stated in Section 2820.1, in determining the admissibility of evidence, the Federal Rules of Evidence shall be deemed persuasive authority. In determining the weight to be given hearsay evidence, the presiding Administrative Law Judge may consider whether a recognized hearsay exception is applicable. To the extent it promotes fairness, equity and substantial justice for all parties, this Rule shall be construed to favor admissibility of relevant, non-cumulative evidence.
- 2820.3 A party asserting an avoidance or other affirmative defense as identified in D.C. Superior Court Civil Rule 8(c) shall bear the burden of production and persuasion with regard to that defense. A party asserting an exception to the requirements or prohibitions of a statute or administrative rule shall bear the burden of production with regard to that exception.
- 2820.4 Subject to the requirements of Section 2820.3, the administrative court shall allocate burdens of production in a manner designed to promote fairness, equity, substantial justice, and sound judicial administration.

2821 TESTIMONY; OATHS

- 2821.1 Unless otherwise provided by statute, protective order or these Rules, the testimony of witnesses at trial shall be taken in open court.
- 2821.2 The presiding Administrative Law Judge may, for good cause shown and with appropriate safeguards, permit presentation of testimony in any proceeding by contemporaneous transmission from a different location, consistent with the requirements of due process. The presiding Administrative Law Judge also may permit the direct testimony of any witness to be submitted in written form in advance of the trial, with the witness appearing in the proceeding for cross-examination, redirect examination and any further testimony permitted.
- 2821.3 No hearing or trial shall be held outside a courtroom of this administrative court, except where required by law upon a lawful request not made for any improper purpose, and upon a determination by the presiding Administrative Law Judge in consultation with the Chief Administrative Law Judge or his or her designee that a hearing or trial may be conducted in an alternative location consistent with safety, decorum, the creation of a reliable record, and fundamental fairness.
- 2821.4 All witnesses must testify under oath, except that this administrative court shall accept a solemn affirmation in lieu of an oath. Nothing in this Rule precludes the admission of an affidavit or other sworn written statement in a proceeding before this administrative court.
- 2821.5 Unless otherwise provided by law, whenever an oral oath is required by these Rules or applicable law, the individual making the oath shall solemnly swear or affirm under the penalties of perjury that the responses

given and statements made will be the truth, the whole truth and nothing but the truth.

2821.6 An interpreter appearing in a matter before this administrative court shall solemnly swear or affirm under penalty of perjury to interpret accurately, completely, and impartially. Language interpretation services during a proceeding will be provided upon the request of a party or where deemed necessary by the presiding Administrative Law Judge.

2821.7 Whenever any applicable law or regulation requires or permits the filing in this administrative court of an affidavit or other writing subscribed to under oath, the subscriber, in lieu of a sworn or notarized statement, may submit a written declaration subscribed as true under penalty of perjury in substantially the following form:

“I declare (or certify, verify, or state) under penalty of perjury, that the foregoing is true and correct. Executed on (date).

“Signature”

2821.8 Pursuant to the Sections 12 and 15 of the Act, all Administrative Law Judges, and the Clerk and his or her designees, are authorized to administer oaths.

2822 SUBPOENAS

2822.1 Subpoenas shall only be issued by the presiding Administrative Law Judge and shall be served in accordance with the provisions of D.C. Superior Court Civil Rule 45.

2822.2 Unless otherwise provided by law or order of this administrative court, any request for a subpoena shall be filed no later than eleven (11) days prior to the proposed return date, and must state the relevance of the requested information or testimony to the pending case. Failure to comply with the requirements of this Section may result in the summary denial of the subpoena request.

2823 DISCOVERY

2823.1 In addition to the right to seek a subpoena under Rule 2822, in every case in which an evidentiary hearing has been ordered, each party shall disclose, by filing with this administrative court and serving upon each other party, the documentary exhibits it wishes to offer at the hearing or otherwise seeks to have considered by the presiding Administrative Law Judge. Unless otherwise ordered, such disclosure shall be made at least ten (10) calendar days before the date on which the evidentiary hearing is scheduled, except that, in unemployment compensation cases, such disclosure shall be made at least three (3) business days before the date on

which the evidentiary hearing is scheduled. This Section does not limit the right of any party to obtain information as permitted by other applicable law. This disclosure obligation contained in this Section shall not be deemed to be discovery for purposes of these Rules.

2823.2 No discovery shall be permitted unless authorized by order of the presiding Administrative Law Judge. Discovery shall be limited to Complex Track cases, and all requests for discovery shall be made upon motion.

2823.3 Unless otherwise provided for by applicable law or these Rules, the presiding Administrative Law Judge may permit any method of discovery available pursuant to the D.C. Superior Court Rules of Civil Procedure.

2823.4 If a motion to permit discovery pursuant to Section 2823.2 is granted, based on the discovery requested, the presiding Administrative Law Judge may order the submission of a joint discovery plan, the use of a specific method of discovery, or the service of a specific discovery request. The responding party shall have fourteen (14) days to respond to a specific discovery request, in a manner otherwise consistent with the provisions of the D.C. Superior Court Rules of Civil Procedure.

2823.5 The use of interrogatories is disfavored, and shall not be permitted unless otherwise ordered by this administrative court upon a showing by the proposing party that the information sought cannot reasonably and efficiently be obtained by an alternative method. When authorized, the number of interrogatories ordinarily should not exceed ten (10) including subparts.

2823.6 Notwithstanding any other provision of these Rules, each deposition must be specifically authorized in advance by order of this administrative court.

2823.7 Unless otherwise ordered by this administrative court, all discovery shall be completed no later than thirty (30) days prior to the trial date. All discovery requests must be timely served sufficiently in advance so as to permit responses consistent with this Rule to be served on or before this deadline.

2823.8 Sanctions for failure of a party to comply with an order of this administrative court made pursuant to this Rule shall be as permitted by applicable law.

2824 JUDGMENT AS A MATTER OF LAW

2824.1 If during a trial a party has been fully heard on an issue and this administrative court finds against the party on that issue, this administrative court may enter judgment as a matter of law against that party with respect to any claim or defense that, under the controlling law,

cannot be maintained or defeated without a favorable finding on that issue. Alternatively, this administrative court may decline to render any judgment until the close of all evidence.

- 2824.2 Motions under this Rule may be made at any time before the record is closed, or as otherwise scheduled by this administrative court, and shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

2825 RELIEF GRANTED IN FINAL ORDERS

- 2825.1 The relief granted in any final order issued under the Civil Infractions Act of 1985, as amended (D.C. Official Code Title 2, Chapter 18) or D.C. Official Code Title 8, Chapter 8, shall not be different in kind from, or exceed in amount, the relief that was requested.

2826 TRANSCRIPTS; CITATION AND COSTS

- 2826.1 All trials and other proceedings shall be recorded in a manner consistent with the creation of a reliable and comprehensible record. The product of such recordation is the only official record of a proceeding before this administrative court.

- 2826.2 Unless otherwise provided by law or these Rules, recordings of this administrative court's proceedings may be obtained at the requesting party's expense or, if authorized by law, at the expense of the litigating agency.

- 2826.3 Transcripts of the recording of the proceedings shall be prepared by a qualified reporter or transcriber who shall personally certify under oath that he or she is not a party or counsel to a party or otherwise related to or employed by the party or counsel in the case; that he or she has no material interest in the outcome of the case; and that the transcript represents the testimony and proceedings of the case as recorded. The Chief Administrative Law Judge may set standards regarding the qualification of reporters or transcribers.

- 2826.4 A party may only cite to a transcript as provided under this Rule.

- 2826.5 Unless otherwise stipulated by the parties or ordered by this administrative court, if a party cites to a portion of a transcript, the entire transcript of the case shall be filed with this administrative court, and a copy served upon all parties.

2827 DEFAULTS

- 2827.1 If a respondent fails to answer a Notice of Infraction within the time allowed by law, an Administrative Law Judge or the Clerk shall enter a

notice finding the respondent in default and notifying the respondent of any penalties provided by applicable statute.

2827.2 If a respondent fails to answer a second Notice of Infraction, an Administrative Law Judge shall enter a final notice of default finding the respondent in default and notifying the respondent of any penalties provided by applicable statute.

2827.3 If a respondent fails to answer a Notice of Violation, an Administrative Law Judge shall enter a final notice of default finding the respondent in default and notifying the respondent of any penalties provided by applicable statute.

2827.4 A final notice of default shall set a date for an *ex parte* proof hearing, and shall notify the respondent of an opportunity to appear at the hearing to contest liability, fines, or penalties. It shall also require the respondent to notify this administrative court and the Government, at least ten (10) days before the scheduled hearing, of the intention to appear.

2827.5 In all cases in which a final notice of default has been issued, this administrative court shall conduct an *ex parte* proof hearing to receive evidence offered by the Government, and by any respondent who has filed a timely notice of intention to appear. If a respondent appears at an *ex parte* proof hearing without having filed a timely statement of intention to do so under this Rule, this administrative court may, in its discretion, hear testimony and/or receive exhibits from the respondent, or may set a new trial date.

2827.6 The appearance by a respondent at an *ex parte* proof hearing under this Rule shall not by itself be a basis for suspending or reducing any authorized penalties for failure to timely answer the Notice(s) of Infraction or Notice of Violation.

2828 SUMMARY ADJUDICATION

2828.1 Motions for summary adjudication or comparable relief may be filed in accordance with Rule 2812.

2829 PAYMENT PLANS

2829.1 For cases arising under the Civil Infractions Act of 1985, as amended (D.C. Official Code Title 2, Chapter 18), upon application of a Respondent adjudged liable for monetary sanctions, this administrative court may, in its discretion, permit installment payments, not to extend six (6) months beyond the date the order imposing the sanction becomes final, and imposing a statutory fee of one percent (1%) per month of the outstanding amount owed by a Respondent for the installment service.

- 2829.2 In requesting a payment plan under this Rule, the respondent shall state in writing the reasons for seeking a payment plan, and the length of payment plan time requested. The request must also include information sufficient to demonstrate why respondent cannot afford to pay the outstanding monetary sanction in a lump sum, such as copies of respondent's most recent tax returns, bank statements, balance sheets, and/or cash flow statements.
- 2829.3 Unless otherwise ordered by the presiding Administrative Law Judge for good cause shown and upon a demonstration of excusable neglect, requests for payment plans under this Rule must be filed and served upon the Government within sixty (60) days of the service of the final order under the Civil Infractions Act of 1985, as amended (D.C. Official Code Title 2, Chapter 18).
- 2829.4 The Government is permitted to file and serve a response to a request for a payment plan within five (5) days of the service of the request.
- 2830 REOPENING A MATTER TO RECOVER ABATEMENT COSTS; REQUEST FOR HEARING**
- 2830.1 For cases arising D.C. Official Code Title 8, Chapter 8 in which a final order has been issued, the Government may elect to move to reopen a case, as of right, to seek a collateral order providing for abatement costs. The Government may do so by filing and serving upon respondent a bill of abatement costs not later than one hundred twenty (120) days after service of the final order. Failure, without good cause, to file and serve a bill of abatement costs in the time prescribed in this Section shall preclude recovery.
- 2830.2 Except as provided in Section 2830.4, a request by a respondent for hearings on the Government's motion for abatement cost recovery shall be in writing, and shall be filed within thirty (30) days of service of the bill of abatement costs by the Government upon the respondent.
- 2830.3 If a Respondent files a timely request for a hearing to contest a claim for abatement costs made pursuant to Section 2830.1, the presiding Administrative Law Judge shall hold a hearing limited to the issue of the amount of the abatement costs. Such a hearing, and any *ex parte* proof hearing held pursuant to Sections 2830.4 and 2830.5, shall not litigate the liability of a Respondent previously held liable for the violation for which the Government is claiming abatement costs.
- 2830.4 If a respondent does not file a request for a hearing within the deadline established in Section 2830.2, this administrative court, prior to awarding an order of abatement costs to the Government pursuant to Section 2830.1, shall provide for an *ex parte* proof hearing at which the Government shall

bear the burden of demonstrating it is entitled to an order granting abatement costs. Notwithstanding Section 2830.2, the respondent may elect to appear at the hearing to contest only the amount of the abatement costs being sought by the Government.

- 2830.5 Pursuant to Section 2830.4, a case management order shall be issued and shall set a date for the *ex parte* proof hearing, and shall notify the respondent of an opportunity to appear at the hearing to contest liability. It shall also require the respondent to notify this administrative court and the Government, at least ten (10) days before the scheduled hearing, of the intention to appear. If a respondent appears at an *ex parte* proof hearing without having filed a timely statement of intention to do so under this Section, this administrative court in its discretion may hear testimony and/or receive exhibits from the respondent, or may set a new trial date.

2831 NEW TRIALS

- 2831.1 A new trial may be granted to all or any of the parties and on all or part of the issues for any of the reasons for which rehearings have heretofore been granted in the courts of the United States or of the District of Columbia.
- 2831.2 Upon such motion, this administrative court may reopen the record in the matter, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions and issue a new final order.
- 2831.3 Unless otherwise ordered by an Administrative Law Judge, the filing of a motion for a new trial shall not stay the effectiveness of the final order. If such a motion is timely filed, the final order shall not be deemed final for purposes of judicial review until the motion is ruled upon by the Administrative Law Judge or is denied by operation of law.
- 2831.4 Unless otherwise required by applicable law, any motion for a new trial shall be filed within ten (10) days of service of the final order.
- 2831.5 No response to a motion for a new trial is required unless ordered by this administrative court, which order shall specify procedures and deadlines for future filings on the issue. This administrative court shall not grant such a motion unless it affords the opposing party an opportunity to respond.
- 2831.6 Unless otherwise required by applicable law, no later than ten (10) days after service of the final order, this administrative court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, this administrative court may grant a timely motion for a new trial for a reason not stated in the motion.

2831.7 When granting a new trial, this administrative court shall specify the grounds in its order.

2831.8 A motion filed pursuant to this Rule shall be deemed to be denied if the Administrative Law Judge has not ruled upon it within thirty (30) days of its filing. After the running of that 30-day period, the Administrative Law Judge in his or her discretion may choose to file a statement of reasons for denying the motion. The filing of any such statement shall not affect the running of any deadline for filing an appeal or petition for judicial review.

2832 RECONSIDERATION

2832.1 Reconsideration of a final or interlocutory order may be granted to all or any of the parties and on all or part of the issues for any of the reasons for which reconsideration has heretofore been granted in the courts of the United States or of the District of Columbia.

2832.2 If a motion for reconsideration is granted, this administrative court may reopen the record in the matter, amend findings of fact and conclusions of law or make new findings and conclusions and issue a new order.

2832.3 Unless otherwise ordered by an Administrative Law Judge, the filing of a motion for reconsideration shall not stay the effectiveness of the order. With respect to a final order, if such a motion is timely filed, the order shall not be deemed final for purposes of judicial review until the motion is ruled upon by the Administrative Law Judge or is denied by operation of law.

2832.4 Unless otherwise required by applicable law, any motion for reconsideration of a final order shall be filed within ten (10) days of service of that order. Any motion for reconsideration of an interlocutory order shall be filed within ten (10) days of service of that order, or within such other time period as the presiding Administrative Law Judge permits.

2832.5 No response to a motion for reconsideration is required unless ordered by this administrative court, which order shall specify procedures and deadlines for future filings on the issue. This administrative court shall not grant such a motion unless it affords the opposing party an opportunity to respond.

2832.6 A motion filed pursuant to this Rule shall be deemed to be denied if the Administrative Law Judge has not ruled upon it within thirty (30) days of its filing. After the running of that 30-day period, the Administrative Law Judge in his or her discretion may choose to file a statement of reasons for denying the motion. The filing of any such statement shall not affect the running of any deadline for filing an appeal or petition for judicial review.

2833 RELIEF FROM FINAL ORDERS

2833.1 Clerical mistakes in orders or other parts of the record and errors arising therein from oversight or omission may be corrected by this administrative court at any time of its own initiative or on the motion of any party and after such notice, if any, as this administrative court orders. During the pendency of any proceeding for judicial review, such mistakes may be so corrected before the appeal is docketed in the reviewing court, and thereafter may be so corrected with leave of the reviewing court.

2833.2 On motion and upon such terms as are just, this administrative court may relieve a party or a party's legal representative from a final order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 2831; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the final order is void; (5) a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the final order. Relief under this Section may be granted only to the extent it could be granted under the standards of D.C. Superior Court Civil Rule 60.

2833.3 A motion for relief under Section 2833.2 shall be made within a reasonable time, and in no event more than ninety (90) days after service of the final order, or in the case of a final order issued by an agency other than OAH for a subject matter now under the jurisdiction of OAH, not later than March 22, 2005. The filing of such a motion does not affect the finality of an order or suspend its operation.

2833.4 This Rule does not limit the power of a court of competent jurisdiction to entertain an independent action to relieve a party from a final order, or to set aside a judgment for fraud upon this administrative court.

2834 HARMLESS ERROR

2834.1 No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by this administrative court or by any of the parties is grounds for granting a new trial or for vacating, modifying or otherwise disturbing an order, unless refusal to take such action appears to this administrative court to be inconsistent with substantial justice.

2834.2 This administrative court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

2835 STAY OF FINAL ORDERS

2835.1 Unless otherwise provided by statute or by this administrative court, neither the filing of an appeal, a petition for review nor of any post-trial motion shall stay the effectiveness of a final order. A stay shall be granted only upon order of this administrative court.

2835.2 In determining whether to grant a stay, this administrative court shall assess whether the movant is likely to succeed on the merits, whether denial of the stay will cause irreparable injury, whether and to what degree granting the stay will harm other parties, and whether the public interest favors granting a stay.

2835.3 This Rule does not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of a petition for review, or to suspend, modify, restore, or grant an injunction during the pendency of an application for judicial review or a petition for review, or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

2836 INABILITY OF JUDGE TO PROCEED

2836.1 If a trial has commenced and the assigned Administrative Law Judge is unable to proceed, any other Administrative Law Judge may proceed with it upon certifying on the record familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties.

2836.2 The successor Administrative Law Judge shall at the request of a party listen to the recorded testimony of any witness whose testimony is material and disputed, and may also listen to the recorded testimony of any other witness. If a recording of the trial or any part of the trial is unavailable, the successor Administrative Law Judge shall recall witnesses in accordance with the standards in D.C. Superior Court Civil Rule 63.

2837 RECUSAL; ETHICS COMPLIANCE

2837.1 An Administrative Law Judge shall recuse himself or herself in accordance with the standards applicable to judges of the Superior Court of the District of Columbia, unless a different standard is required under the authority of the Act.

2837.2 Administrative Law Judges shall at all times be in compliance with the requirements of the OAH Code of Judicial Ethics, a copy of which shall be maintained and be available for inspection and copying at the Clerk's office during business hours.

2838**APPEARANCE OF ATTORNEYS**

2838.1

An individual or other party may be represented before this administrative court by an attorney. Unless otherwise provided by statute or these Rules, only attorneys who are active members in good standing of the District of Columbia Bar may appear before this administrative court as a representative of a party.

2838.2

An attorney who is not a member of the District of Columbia Bar may appear before this administrative court consistent with District of Columbia Court of Appeals Rule 49 and other applicable law, upon the filing and granting of a motion to appear *pro hac vice*, in which the attorney shall declare under penalty of perjury:

- (a) That I have not applied for admission *pro hac vice* in more than five cases in this administrative court or in the courts of the District of Columbia during this calendar year;
- (b) That I am a member in good standing of the highest court(s) of the State(s) of ____ (list state all states);
- (c) That there are no disciplinary complaints pending against me for violation of the rules of the courts of those states;
- (d) That I have not been suspended or disbarred for disciplinary reasons from practice in any court;
- (e) That I do not practice or hold out to practice law in the District of Columbia;
- (f) That I have read all of the rules of this administrative court and the District of Columbia Court of Appeals, and have complied fully with District of Columbia Court of Appeals Rule 49. The reason(s) I am applying for admission *pro hac vice* are as follows:_____ (list all reasons); and
- (g) I acknowledge the jurisdiction of this administrative court and the courts of the District of Columbia over my professional conduct, and I agree to be bound by the District of Columbia Court of Appeals Rules of Professional Conduct, in this matter, if I am admitted *pro hac vice*. I have applied for admission *pro hac vice* in this administrative court and in the courts of the District of Columbia _____ (list number) times previously in this calendar year.

2838.3

As part of any motion to appear *pro hac vice* under this Rule, the attorney must also provide satisfactory evidence that his or her client consents to

being represented by an attorney who is not a member of the District of Columbia Bar.

- 2838.4 Current law students active in *pro bono* legal clinics may appear before this administrative court with the consent and oversight of the supervising attorney assigned to them and in a manner consistent with District of Columbia Court of Appeals Rule 48, and under any limitations ordered by the presiding Administrative Law Judge. A law student authorized to appear under this Section may only appear before this administrative court in the presence of a supervising lawyer as defined in D.C. Court of Appeals Rule 48(e). A law student practicing under this Section shall not file any paper with this administrative court unless it is signed by the law student and the supervising lawyer.
- 2838.5 In addition to these Rules, the District of Columbia Rules of Professional Conduct shall govern the conduct of all attorneys appearing before this administrative court.
- 2838.6 Pursuant to Section 17 of the Act, and in the exercise of this administrative court's inherent authority to regulate and manage practice before it, *Ramos v. District of Columbia Department of Consumer and Regulatory Affairs*, 601 A.2d 1069, 1073-74 (D.C. 1992), the Chief Administrative Law Judge or presiding Administrative Law Judge may restrict the practice of any attorney appearing before this administrative court. Such restrictions may include, without limitation:
- (a) disqualification from a particular case;
 - (b) suspension of the privilege of practicing before this administrative court;
 - (c) a requirement that an attorney obtain ethics or other professional training or counseling; or
 - (d) a requirement that an attorney appear only when accompanied by another attorney with particular skills or a particular level of experience.
- 2838.7 The Chief Administrative Law Judge or presiding Administrative Law Judge may enter an order restricting practice in the event of a violation of these Rules or for other good cause. If imposing a disqualification or suspension, the attorney shall be given notice and opportunity to be heard either before the imposition of the suspension or disqualification, or as soon thereafter as is practicable.
- 2838.8 An Administrative Law Judge may exercise the authority under this Rule only against an attorney who has appeared before that judge in a case that continues to be pending. If an Administrative Law Judge exercises such

authority, the affect of an order restricting practice shall be limited to the subject attorney's practice before the issuing judge. Nothing in this Rule limits the authority of the Chief Administrative Law Judge to enter a separate order restricting an attorney's privilege of practicing before this administrative court.

2838.9 Any attorney appearing before this administrative court in a representative capacity under this Rule shall provide, immediately under his or her signature, his or her valid District of Columbia bar number. Persons appearing (or applying to appear) in a representative capacity under Sections 2838.2 or 2838.4 shall provide, immediately under his or her signature, the Rule under which he or she is appearing (or applying to appear). Persons appearing under Section 2838.2 shall also provide the bar number, if any, of at least one jurisdiction in which that person is admitted to practice law. This Section applies to every paper filed with this administrative court by an attorney or law student practicing under Rule 2838.

2839 APPEARANCE OF NON-ATTORNEYS

2839.1 An individual may represent himself or herself in proceedings before this administrative court.

2839.2 The administrative court shall endeavor in all its proceedings to safeguard the public from the unauthorized practice of law in violation of D.C. Court of Appeals Rule 49. An Administrative Law Judge may permit a party to be represented by another person who is not an attorney, without charge or fee, where required by law. An Administrative Law Judge may permit a party to be represented by an individual, or by a representative of any entity listed in Section 2839.4, if the party had a contractual relationship substantially related to the subject matter of the case that existed prior to the case arising (such as a landlord/tenant or owner/property manager relationship).

2839.3 An agency may be represented before this administrative court by the Corporation Counsel, an attorney assigned to the agency, or by a duly authorized agency employee when consistent with applicable law.

2839.4 A corporation, partnership, limited partnership, or other private legal entity may be represented in proceedings before this administrative court by a duly authorized officer, director, general partner, or employee.

2839.5 Pursuant to applicable law, including Sections 12 and 17 of the Act, and in the exercise of this administrative court's inherent authority to protect the integrity of its proceedings and regulate the practice of individuals who appear before it, *see, e.g., Brown v. District of Columbia Board of Zoning Adjustment*, 413 A.2d 1276, 1282-83 (D.C. 1980), the Chief

Administrative Law Judge or an Administrative Law Judge may regulate and restrict the right of any individual to appear before this administrative court.

- 2839.6 The Chief Administrative Law Judge or a presiding Administrative Law Judge may enter an order restricting the right of an individual to appear before this administrative court in the event of a violation of these Rules or for other good cause. If imposing a disqualification or suspension, the individual shall be given notice and an opportunity to be heard either before the imposition of the suspension or disqualification, or as soon thereafter as is practicable.
- 2839.7 An Administrative Law Judge may exercise the authority under this Rule only against an individual who has appeared before that judge in a case that continues to be pending. If an Administrative Law Judge exercises such authority, the affect of an order restricting the right of an individual to appear before this administrative court shall be limited to the subject individual's appearance before the issuing judge. Nothing in this Rule limits the authority of the Chief Administrative Law Judge to enter a separate order restricting an individual's right to appear before this administrative court.
- 2839.8 An Administrative Law Judge may permit a party to be represented by a non-attorney Family Member, only where that Family Member does not request or accept compensation, in any form, for providing representation to a party in the limited circumstances in which such representation is permitted by this Rule.
- 2839.9 Unless otherwise required by law, no person who is not a member in good standing of the District of Columbia Bar or an attorney admitted to limited practice pursuant to Section 2838.2, may request or accept compensation, in any form, for providing representation to a party. A presiding Administrative Law Judge may require such disclosures as may be reasonably necessary to ensure compliance with this Section, and in the furtherance of this administrative court's responsibility to safeguard the public from the unauthorized practice of law in violation of D.C. Court of Appeals Rule 49.
- 2839.10 Under the limited circumstances permitted under this Rule, any person representing a litigant shall make clear, on each document it files with this administrative court on the litigant's behalf, what its relationship is to the litigant, and that such representative is not a member of the District of Columbia bar, or a person otherwise practicing under Rule 2838. Each such person shall also indicate to the satisfaction of the presiding Administrative Law Judge, that he or she has obtained the informed consent of the litigant to act as the litigant's representative for all purposes before this administrative court.

2840 ADMINISTRATIVE COURT AND CLERK GENERAL PROVISIONS

2840.1 Unless a federal law or regulation or District of Columbia statute requires that a particular federal or District of Columbia procedure be observed, these Rules and any final or interlocutory order of this administrative court shall take precedence and supersede in the event of a conflict with other authority on any issue involving or relating to procedures of this administrative court. All procedural authorities promulgated by any agency relating to adjudicated cases filed with this administrative court pursuant to Section 6 of the Act are hereby superseded. In determining whether an issue involves or relates to procedures of this administrative court, the presiding Administrative Law Judge shall follow the doctrine set forth in *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), and related case law. These Rules shall be deemed to involve or relate to procedures of this administrative court unless otherwise found in an order issued under the authority of Section 2840.2 or on judicial review of a decision of this administrative court.

2840.2 Where a decision of an Administrative Law Judge is in conflict with a decision of a least one other Administrative Law Judge on the same issue, or where litigants before this administrative court would likely benefit from a clear precedent on a particular legal issue, the Chief Administrative Law Judge may, upon motion by a party in a pending adjudicative case, or upon his or her own motion, assign three Administrative Law Judges who have not participated in either the pending adjudicative case or the conflicting decisions, to sit on a panel and decide all or part of the pending case. In determining whether to convene a panel under this Section, the Chief Administrative Law Judge may consider, among other things, whether the panel is likely to provide clarity and guidance in an important legal issue before this administrative court. Except as otherwise ordered, a motion brought under this Section shall be deemed denied unless granted within ten (10) days of its filing. The denial of a request for a panel under this Section shall be deemed an interlocutory order. A motion under this Section may not be filed within thirty (30) days prior to a trial date, except by leave of the presiding Administrative Law Judge. Unless granted by the Chief Administrative Law Judge, the mere filing of a motion under this Section shall have no effect on a pending case.

2840.3 This administrative court may, on its own motion, obtain information relevant to a pending matter from a disinterested person by inviting and receiving an *amicus curiae* submission. All parties to the matter shall be given a reasonable opportunity to respond to any *amicus* submission. A presiding Administrative Law Judge may also grant a motion to file a submission *amicus curiae*; however, no such submission shall be filed without advance leave of the presiding Administrative Law Judge. A motion for leave to file a submission *amicus curiae* shall not exceed five

pages and shall state which parties to the litigation, if any, consent to its filing. Such a motion shall also state why the filing of the contemplated *amicus curiae* submission is likely to contain relevant matter not already brought to the attention of the administrative court by the parties. Any *amicus curiae* submission filed without advance leave shall be rejected for filing by the Clerk, or be stricken by order of the presiding Administrative Law Judge.

- 2840.4 All papers to be filed in proceedings before this administrative court shall be filed in the Clerk's office. Unless otherwise provided by these Rules or ordered by the Chief Administrative Law Judge, no papers may be filed in the Clerk's office when this administrative court is closed, or before 9:00 AM or after 5:00 P.M. on days when this administrative court is open.
- 2840.5 Papers filed in an appellate proceeding or other proceeding before this administrative court may be subject to a filing fee in accordance with a fee schedule published in the *D.C. Register*.
- 2840.6 This administrative court shall be a weapons and illegal drug free area. Weapons, including, but not limited to, guns, knives, box cutters, chemical spray and pepper spray, are strictly prohibited and subject to confiscation. With regard to authorized service weapons, this Section does not apply to law enforcement officers employed by the District of Columbia or an agency of the United States either in uniform or with a prominently displayed badge and identification.
- 2840.7 No items that are potentially toxic, dangerous or otherwise present a threat to health or safety, such as sharp objects or refuse, shall be brought into the courtrooms of OAH, its common areas or offices, or offered as evidence in any proceeding before this administrative court unless identified to the Clerk's office at least ten (10) or more days prior to the proceeding so that sufficient safeguards may be put in place. A partial list of prohibited items shall be made available in the Clerk's office.
- 2840.8 An Administrative Law Judge, security personnel or administrative court staff may require the temporary removal of any individual who presents a threat to safety or is causing or contributing to a disruption of the administrative court's operations or proceedings.
- 2840.9 A monetary sanction pursuant to Section 12 of the Act or other authority shall not be imposed by an Administrative Law Judge unless it is in writing, is based on the observations of the Administrative Law Judge in a proceeding and is in the record, and the party subject to the sanction has had an opportunity to be heard on the matter. A fine or statutory penalty imposed in an enforcement case, including without limitation a Notice of Infraction or Notice of Violation, shall not be deemed a monetary sanction for purposes of this Section. A non-monetary sanction may only be

ordered by an Administrative Law Judge against a party for a default; a violation of these Rules, an order, or interlocutory order; or upon a finding of bad faith conduct within the context of a litigation. Such an order shall be consistent with the Due Process Clause, these Rules, and all other applicable law. Every order or interlocutory order issued by a presiding Administrative Law Judge shall be deemed to have incorporated this Section by reference.

- 2840.10 The use of cellular phones, pagers or other devices that emit noise and/or are capable of wireless transmission or reception shall not be permitted in courtrooms during a proceeding, except that such devices are permitted if they are set in a non-audible mode and are not used for transmission during a proceeding.
- 2840.11 Any organization, group, or individual may possess or use drawing or sketching equipment in a hearing room so long as the possession or use of such equipment does not interfere with the rights of the parties to a fair hearing, does not interfere with the fairness or conduct of a proceeding, and where such use is not precluded by statute, regulation, or order.
- 2840.12 Broadcasting, videotaping, photographing, or audio recording by any organization, group, or individual is not permitted in hearing rooms, witness rooms, waiting rooms, reception areas, or any other rooms or areas regularly utilized by OAH for administrative court operations.
- 2840.13 For purposes of this Rule, a hearing or proceeding is any matter in which an Administrative Law Judge or the Chief Administrative Law Judge presides.
- 2840.14 Nothing in this Rule shall be construed to limit the authority of the Chief Administrative Law Judge to authorize the recordation of a proceeding for training or evaluative purposes, to the extent that the Chief Administrative Law judge has determined that the use of such equipment does not interfere with the fairness or conduct of a proceeding, and where such use is not precluded by statute, regulation, or order.
- 2840.15 Except as otherwise required by the Chief Administrative Law Judge, any Administrative Law Judge may attend and observe any proceeding before the OAH to facilitate training, and for any other purposes consistent with the Act. Any Administrative Law Judge attending any proceeding pursuant to this Section shall manage any privileged or otherwise legally confidential information as required by applicable law and in the same manner that would be required if he or she was presiding at that proceeding.
- 2840.16 Non-judicial staff of the OAH may attend may attend and observe any proceeding before the OAH for training, and for any other purposes

consistent with the Act, except as otherwise ordered by the presiding Administrative Law Judge. Any non-judicial staff member attending any proceeding pursuant to this Section shall manage any privileged or otherwise legally confidential information as required by applicable law and in the same manner required if he or she was serving as a member of the Clerk's office at that proceeding.

2840.17 Unless otherwise prohibited by applicable law or by order of this administrative court, proceedings before this administrative court shall be open to the public.

2840.18 Unless otherwise provided in these Rules or prohibited by applicable law, the Chief Administrative Law Judge may, in his or her discretion, delegate the authority of his or her office to an Administrative Law Judge, and an Administrative Law Judge may delegate any ministerial or administrative authority of his or her office to the Clerk or his or her designees.

2840.19 If no applicable District of Columbia law or agency rule, other than these Rules, provides a time period within which to appeal an agency action or decision consistent with Rule 2805, such appeal must be filed within thirty (30) days of the agency's transmitting its decision to the party filing a request for a hearing under Rule 2805.

2841 REPEAL OF BOARD OF APPEALS AND REVIEW RULES OF PROCEDURE

2841.1 Title 1, Chapter 5 of the District of Columbia Municipal Regulations is hereby repealed effective March 22, 2004.

2842 REVIEW OF RULES

2842.1 The Chief Administrative Law Judge shall review these Rules within thirty-six (36) months of their final promulgation, and, in his or her discretion, may issue revised rules for public comment and promulgation after the review.

2843-2897. RESERVED

2898 PUBLICATION OF SCHEDULE OF FILING AND RELATED FEES

2898.1 Notwithstanding any other provision of this Rule, no fee under this Rule shall apply in any case arising from a challenge by an individual to a decision of the Department of Human Services or the District of Columbia Energy Office, a case arising from a challenge by an individual to a decision by the Department of Health denying that individual access to a governmental benefit, or matters arising under D.C. Law 6-108 (D.C. Official Code §§ 44-1001.01, *et seq.*).

- 2898.2 Pursuant to Section 8(b) of the Act, no fee under this Rule shall be applicable to the District of Columbia Government or the United States.
- 2898.3 Except as otherwise provided by law, the fee schedule in this Rule shall apply in any case commenced in this administrative court, on or after October 1, 2004.
- 2898.4 Case commencement submissions in the following types of cases shall have a filing fee of \$40.00:
- (a) Cases arising from an appeal of a decision of the Office of Tax and Revenue;
 - (b) Cases arising under the former jurisdiction of the Board of Appeals and Review;
 - (c) Cases arising from the appeal of a denial of any professional or occupational license where the applicant has been determined to be unqualified or otherwise ineligible for licensure; and
 - (d) Appeals governed procedurally by 1 DCMR Chapter 29.
- 2898.5 Cases commenced by a Notice of Violation in which the Respondent has admitted his or her liability for the charged offense upon entry of an initial plea, shall be subject to an administrative fee of \$5.00 upon disposition.
- 2898.6 Cases commenced by a Notice of Infraction in which the Respondent has admitted his or her liability for the charged offense upon entry of an initial plea, shall be subject to an administrative fee of \$10.00 upon disposition.
- 2898.7 Fees required under this Rule shall be tendered at the time of filing except for fees applicable under Sections 2898.5 and 2898.6, which shall be tendered at the time of payment of the applicable monetary sanction. Failure to comply with this Section shall render any commencement submission to which it is applicable subject to summary rejection by the clerk, or to being stricken by the administrative court.

2899 GENERAL DEFINITIONS

For the purposes of this Chapter the term:

“Act” means the Office of Administrative Hearings Establishment Act of 2001, D.C. Official Code §§ 2-1831.01 *et seq.*

“Adjudicated case or matter” means a contested case or other administrative adjudicative proceeding before the Mayor or any agency that results in a final disposition by order and in which the legal rights, duties, or privileges of specific parties are required by any law or constitutional provision to be determined after an adjudicative hearing of any type. The term “adjudicated case” includes, without limitation, any required administrative adjudicative proceeding arising from a charge by an agency that a person committed an offense or infraction that is civil in nature.

“Administrative court” or “OAH” means the Office of Administrative Hearings as established pursuant to the Act.

“Administrative Law Judge,” unless otherwise specified, means an administrative law judge of the Office of Administrative Hearings acting under authority of the Act and other applicable law.

“Administrative Procedure Act” means D.C. Official Code §§ 2-501 *et seq.*

“Administrative rule” shall have the meaning provided in D.C. Official Code § 2-502(6).

“Agency” shall have the meaning provided that term in D.C. Official Code § 2-502(3).

“Appellate Proceeding” means any case in which any applicable law grants jurisdiction to this administrative court to review a decision made by another tribunal after an opportunity for an evidentiary hearing in that tribunal.

“Authorized representative” means an attorney who is an active member in good standing of the District of Columbia bar, or, when permitted by applicable law, an individual designated by a party to represent the party.

“Business day” means any day on which this administrative court is open for usual operations, and that is not a Saturday, Sunday, legal holiday or inaccessible day.

“Chief Administrative Law Judge” means the Chief Administrative Law Judge of OAH as authorized by Section 7 of the Act, or any person serving as Acting Chief Administrative Law Judge or interim Chief Administrative Law Judge of OAH.

“Clerk” or “Clerk of Court” means the Clerk of the Office of Administrative Hearings or authorized designee.

“Contested case” shall have the meaning provided that term in D.C. Official Code § 2-502(8).

“Day” means calendar day, unless otherwise specified.

“District of Columbia” means any agency, department, commission, and instrumentality of the District of Columbia government, but does not include the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

“Family Member” means a person’s spouse, parent, grandparent, son, daughter, sibling, grandson, granddaughter, or any domestic partner recognized by District of Columbia law, or a substantially similar law of another jurisdiction.

“Filed” means, unless otherwise specified, when the document is actually received by the Clerk of Court. Notwithstanding the foregoing definition, a document filed pursuant to Rule 2805 may relate back for purposes of timeliness if expressly authorized by an OAH form approved by the Chief Administrative Law Judge pursuant to Section 8(a)(7) of the Act and if the filing party uses such form.

“Government” means the District of Columbia, or any governmental agency authorized by law to prosecute cases before this administrative court and whose administrative litigation falls under the jurisdiction of OAH, but does not include OAH.

“Inaccessible day” means any day on which inclement weather or other conditions have resulted in the closing of this administrative court, or when the Mayor has closed the District of Columbia government or has publicly announced an unscheduled leave policy for the District of Columbia government due to inclement weather or other conditions.

“Individual” means a natural person.

“Interlocutory order” means any decision of an Administrative Law Judge in a matter other than an order as defined in the Act.

“Legal holiday” means New Year’s Day, Birthday of Dr. Martin Luther King, Jr., President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day designated as a legal holiday by the President of the United States, Congress, the Mayor or the Council of the District of Columbia.

“Notice of Infraction” means the charging document issued by the Government pursuant to the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 *et seq.*

“Notice of Violation” means the charging document issued by the Government pursuant to the Litter Control Administration Act of 1985, D.C. Official Code §§ 8-801 *et seq.*

“Official record” means the record of proceedings created and maintained by this administrative court.

“Order” shall have the meaning provided that term in D.C. Official Code § 2-502(11) unless otherwise provided.

“Paper” means orders, pleadings, motions, exhibits or any other non-electronic document in any adjudicated case.

“Party” shall have the meaning provided that term in D.C. Official Code § 2-502(10).

“Petitioner” means the party presenting a request for relief or other action from this administrative court.

“Pleading” means a paper in which a party to a proceeding before this administrative court sets forth or responds to allegations, claims, denials or defenses.

“Presiding Administrative Law Judge” or “Presiding Judge” means an Administrative Law Judge who presides in a particular matter. It is not used in these Rules to refer to any category of Administrative Law Judges with specified management or administrative responsibilities

“Proceeding” means a trial, hearing or other matter related to an adjudicated case before this administrative court.

“Request for hearing” means, unless otherwise specified, an oral or written request for a formal examination by this administrative court of issues of law and fact between parties and includes, but is not limited to, appeals from initial determinations of unemployment compensation claims as well as Rental Accommodation and Conversion Division petitions for hearings.

“Respondent” means the party answering the petitioner’s request for relief or other action from this administrative court.

“Rule” or “Rules” means the rules of practice and procedure set forth in Chapters 28 and 29 of this Title, and shall refer to an entire section of a Chapter, as opposed to a subsection.

“Third party commercial carrier” means a carrier that is in the business of regularly accepting and delivering papers, such as Federal Express or the United Parcel Service.

“Trial” or “hearing” means a formal examination by this administrative court of issues of law and fact between parties, which may involve the offering of sworn testimony or documentary or photographic evidence.